



Wellness and Legal Ethics, rev. 2022

Unique stress presented by legal profession:

- 1) Sense of Helplessness- a feeling that what a lawyer does rarely makes a difference.
- 2) Lack of control and autonomy- little control over the schedule from court/firm/other people's crises.
- 3) Adversarial- nearly every action step is adversarial against opposing party, judge, own client, or firm's ability.

- Dr. Amy Wood, PsyD, "Law and the Good Life Wellness System"

Ethical Piffalls and Solutions, recent cases and complaints:

<u>Complaints:</u> Lack of reasonable communication and diligence by lawyer (39% of Montana ODC complaints 2019)
<u>Rules implicated:</u> 1.1, 1.2, 1.3, 1.4, 1.16, 2.1, 7.1 all speaking to "reasonable" communication and diligence, offering "candid" advice even on matters outside the law such as client's own mental health and life choices, and declining or terminating representation if lawyer's own mental health "materially impairs" representation <u>or if client has rendered lawyer's services "unreasonably difficult"</u> .
<u>Personal screening:</u> <ul style="list-style-type: none"> • Is the volume of work I have reasonable? • Do I have the business skills necessary to tackle the work (time management, a plan for communication, a plan or method for difficult conversations, use technology and staff appropriately to keep client's informed) • Is my mental health (ranging from self-unaware, burnout, general stress all the way to clinical depression, etc.) affecting my communication and diligence? (hopelessness unwarranted by the case, communication avoidant, can't deal with difficult client) • Or is the work, client, or case genuinely hopeless or too difficult?
<u>Well-Being action step:</u> <ul style="list-style-type: none"> • Decline new cases or close lingering cases.
<ul style="list-style-type: none"> • Seek out the business skills to help with work volume and setting appropriate boundaries (e.g. time management course, difficult conversations training, mediation training). • Clarify your own vision of your role as a lawyer- who/what you can help with.

- Seek out well-being assistance: start a wellness practice (meditation, intentional self-care, exercise, friend time) or seek out counseling. *In cases where mental health was an issue and help was sought out, ODC saw this as a mitigating factor in crafting punishment for lawyers, since malice was not the issue.*

Complaints: Unreasonable work-place expectations. Lack of understanding of how to seek help, when to offer help from superiors in the workplace, versus when ODC reporting is required. Lack of recognition of stress.

Rules implicated: 5.1 (Supervisor or firm's responsibility for another lawyer's violation of MRPC), 8.3 (Duty to report a lawyer's violation that raises a "substantial question" as to lawyer's fitness), Preamble to MRPC (a lawyer shall also be guided by personal conscience... virtually "all ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system, and to the lawyer's own interests.") ABA resolution 105 urging bar associations, courts, firms, and all involved in the profession to consider intentional and practical ways to implement wellness strategies in the workplace, and seeking to clarify firm's role in supporting vs. reporting lawyers.

Personal screening:

- Does my workplace support help-seeking behavior?
- Does my workplace support soft-skills training in order to better manage workplace stress?
- If I am a manager, am I comfortable offering support versus punishment?
- Does my workplace have an intentional wellness program?

Well-Being action step:

- Work with firm management to identify areas of need and implement office-wide policies.
- Educate self and others about the unique difficulties presented by the legal profession and normalize help-seeking rather than just "dealing with it".
- All individual self-reflection and self-care as described above.

Complaints: Misuse of trust funds for own personal crisis.

Rules implicated: 1.5 (unreasonable fees), 1.18 (compliance with IOLTA funds). In an out of state ODC complaint where a lawyer used trust funds for own personal crises, although she nearly immediately made clients whole again she was suspended. Her lack of malice was a mitigating factor in preventing disbarment.

Personal screening:

- Am I able to timely and correctly manage finances?
- Do I need finance skills or support staff?
- Is my mental health or life stress clouding my judgment regarding finances?

Well-Being action step:

- Ensure proper bookkeeping for client funds and hire an expert if unable to do so.
- Be aware of the way financial and life stress colors your professional life.
- Seek help if client funds feel tempting.

Complaints: Stress related to adversarial work and relationships with third parties.

Rules implicated: Dishonesty, misleading statements, allowing clients to be dishonest, dealings with unrepresented parties, and impressions made via your advertising: 3.3, 3.4, 4.1-.4, and preamble.

Personal screening:

- Do my duties to client and conscience conflict when it comes to my dealings with third parties (other than flat out dishonesty)?
- Do I need help with soft skills to better manage difficult conversations?
- What is my vision for my reputation?

Well-Being action step:

- Seek out soft skills training for managing difficult inter-personal dynamics.
- Seek out mediation and negotiation strategies that do not feel manipulative or out of line with your conscience.
- Craft clear boundaries for how you will treat third parties that is more in line with your vision than the ethical rules require (e.g. more clear than not being dishonest).